



**NY State of Health Comments on Patient Protection and Affordable Care Act;  
HHS Notice of Benefit and Payment Parameters for 2024**

NY State of Health, the State’s Official Health Plan Marketplace, submits the following comments on the proposed regulations contained in the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2024.

III. Provisions of the Proposed HHS Notice of Benefit and Payment Parameters for 2024

**B. Part 155 – Exchange Establishment Standards and Other Related Standards under the Affordable Care Act**

4. *Eligibility Standards (§ 155.305)*

- Proposed Rule

The proposed rule seeks to amend § 155.305(f)(4) which currently makes the Exchange determine a taxpayer ineligible for APTC if HHS notifies them that a taxpayer (or taxpayer’s spouse, if married) has failed to (1) file a Federal income tax return and (2) reconcile their past APTC for a year for which tax data would be utilized (“FTR”). HHS proposes that Exchanges must find an applicant ineligible for APTC only if the applicant has a delinquent FTR status for *two* consecutive years (for which tax data would be utilized for verification) instead of *one* year.

- NY State of Health Comments

New York supports HHS’ efforts to balance program integrity concerns while minimizing unreasonable burdens on consumers. Given the 9-12 month lead time needed to implement most system changes, New York encourages implementation flexibility on the timing of this particular change to ensure sufficient time for any needed IT system development and testing.

5. *Verification Process Related to Eligibility for Insurance Affordability Programs (§§ 155.315 and 155.320)*

- Proposed Rule

The proposed rule seeks to amend § 155.320 to require Exchanges to accept an attestation of projected annual household income when tax return data from the IRS for verification is unavailable. Currently, when income information from the IRS is unavailable, Exchanges must infer a data matching issue or “DMI.” The proposed rule allows Exchanges to rely on attested income when determining APTC eligibility without generating an automatic DMI. The proposed rule also amends § 155.315(f) to require an automatic 60-day extension in addition to the pre-existing 90-day timeframe for providing documentation to verify household income.

- NY State of Health Comments

New York supports efforts to streamline income verification for consumers. In addition to IRS data, New York leverages additional state data sources to increase the number of individuals whose income can be verified using data sources. New York recommends that HHS allow flexibility to accept consumer attestations when IRS data is not available and states also cannot verify incomes using state data sources.

7. *Special Enrollment Periods (§ 155.420)*

B. Effective Dates for Qualified Individuals Losing Other Minimum Essential Coverage (§ 155.420(b))

- Proposed Rule

The proposed rule seeks to amend the coverage effective date rules at § 155.420(b)(2)(iv) to permit Exchanges the option to offer earlier coverage effective start dates for consumers attesting to a future loss of minimum essential coverage (“MEC”) to mitigate coverage gaps when consumers lose forms of MEC (other than Exchange coverage) mid-month. It would allow for more seamless transitions from other coverage to Exchange coverage.

- NY State of Health Comments

New York supports this change to minimize gaps in coverage consumers experience.

C. Special Rule for Loss of Medicaid or CHIP Coverage (§ 155.420(c))

- Proposed Rule

The proposed rule seeks to amend § 155.420(c)(6) to provide more time for consumers who lose Medicaid or CHIP coverage that is considered MEC as described in § 155.420(d)(1)(i) to report their loss of coverage and enroll in Exchange coverage to mitigate coverage gaps. It would allow for a more seamless transition into Exchange coverage.

- NY State of Health Comments

New York supports efforts to minimize gaps in coverage following the resumption of eligibility redetermination processes per the Consolidated Appropriations Act of 2023 (“CAA”) but requests this provision go into effect upon the NBPP’s finalization in 2023 and requests implementation flexibility of how to effectuate this special enrollment period given time constraints for resuming these processes.

8. *Essential Community Providers (§ 156.235)*

- Proposed Rule

The proposed rule seeks to establish two additional Essential Community Provider (“ECP”) categories: Mental Health Facilities and Substance Use Disorder (SUD) treatment centers and adding Rural Emergency Hospitals (REHs) as a provider type in the “Other ECP Providers” category. HHS also proposes to require Qualified Health Plans (“QHPs”) to contract with at



least 35% of available Federally Qualified Health Centers (“FQHCs”) that qualify as ECPs in the plan’s service area and 35% of available Family Planning Providers that qualify as ECPs.

- NY State of Health Comments

New York supports enhancing access to care for low-income and medically underserved individuals and agrees that Essential Community Providers are an important part of QHP provider networks. Given each state's unique geographic, fiscal, and demographic characteristics, New York recommends that each State-based Exchange be given flexibility regarding the calculation and implementation of appropriate ECP provider participation standards.

*10. Improper Payment Pre-Testing and Assessment (IPPTA) for State Exchanges (§§ 155.1500 through 155.1515)*

- Proposed Rule

The proposed rule seeks to establish IPPTA, an improper payment measurement program of APTC, that will include State Exchanges. It would prepare them for the planned measurement of improper payments of APTC, test processes, and procedures that support HHS’ review of determinations of APTC made by State Exchanges and provide a mechanism for HHS and State Exchanges to share information that would aid in developing an efficient measurement process. State Exchanges would be required to participate in either one of 2024 or 2025.

- NY State of Health Comments

New York continues to have concerns regarding the proposal to establish an improper payment measurement program of APTC for State Exchanges. While New York appreciates the importance of having in place strong program integrity and oversight measures, New York believes that the IPPTA is largely duplicative of existing oversight efforts that meet the same goals.

The proposed federal audit will cause both financial and resource burdens on State Exchanges and duplicate existing efforts. Through existing oversight and annual reporting, CMS has in place processes to monitor compliance with eligibility and enrollment rules, errors, and payment discrepancies:

- The annual SMART tool
- Monthly payment dispute reconciliation
- Quarterly submission of performance monitoring data, as well as ad hoc data requests

If despite these concerns, HHS plans to move forward with this program, New York requests that IPPTA supplant the existing annual programmatic audit requirement.